

APPEAL NO. 022829
FILED DECEMBER 30, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 12, September 11, and October 11, 2002. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, nor does it extend to and include an L4-5 bulge, a protrusion at L5-S1 or a thoracic injury; and that because the claimant has no compensable injury, she has no disability. The claimant appeals, attaching some documents that are being submitted for the first time on appeal. The respondent (self-insured) responds, urging affirmance and objecting to the documents submitted with the claimant's appeal and the additional comments that were outside the testimony given at the CCH.

DECISION

We affirm the hearing officer's decision.

We will not generally consider evidence not submitted into the record, and raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). After review of the record before us, we do not find that the additional evidence offered by the claimant for the first time on appeal is so material that it probably would have produced a different result for reasons more fully explained below.

The hearing officer in this case made her determinations based on the claimant's lack of credibility. The hearing officer states,

Claimant's testimony generally was not credible. Claimant did admit to having several [injuries]...but claimed that the medical records that put any pain in the low back or thoracic were done totally without her knowledge. This in spite of the fact that the records from August 2001 included writing in Claimant's handwriting.

Further, we note that at one point during the CCH the claimant admitted that she was contending that medical records from three different medical care providers (where she had been treated for injuries) had lies in them regarding complaints of a previous back condition. The claimant also claimed during the CCH that a Employee's Notice of Injury or Occupational Disease & Claim for Compensation (TWCC-41) (from her

previous 1999 injury) that indicated she was claiming a back injury in 1999 was wrong. The claimant testified that she had not filled out the TWCC 41 and that although she may have signed it she could not remember.

The hearing officer is the sole judge of the credibility of the evidence presented at the hearing. Section 410.165(a). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ).

The record in this case presented conflicting evidence for the hearing officer to resolve. In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We therefore affirm the decision and order.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Edward Vilano
Appeals Judge